IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7679 of 2005

Between:

1. Government of India, rep. by its Secretary, Ministry of Health and Family . .
Welfare Nirman Bhavan, New Delhi.
2. Government of India, rep. by its Secretary, Ministry of Defence, South Block, .
New Delhi.
3. The Engineer-in-Chief, Military Engineer Service, Army Headquarters, Govt . . of
India, Kasmir House, New Delhi.

..... PETITIONERS

AND

CVK Reddy, S/o. C. Rami Reddy,
O/o. the Chief Constructions Engineer (R & D), DRDO, Secunderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue writ of order or direction more particularly writ of certiorari declaring that the order dt. 26.7.2004 passed in O.A.NO.734 of 2003 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad in setting aside the Office Memorandum dt. 22.05.2002 and proceedings dt. 28.2.2003 and directing the petitioners (respondents therein) to reimburse the respondent in this Writ Petition (Applicant therein) an amount of Rs. 6,65,865/- (U.S. Dollors: 14797) towards medical expenditure incurred by him for the treatment of his wife within a period of 2

months from the date of receipt of the copy of the order is highly illegal, improper, unjust and contrary to law after calling for the records in OA No.734 of 2003 and consequently quash the judgment passed in said O.A.No.734 of 2003.

Counsel for the Petitioner:MR.P.PHALGUNA RAO

Counsel for the Respondent : MR. K.SONAKONDA REDDY

The Court made the following :

ORDER: (Per the Hon'ble Sri Justice G.Bikshapathy)

This writ petition is filed by the Central Government challenging the order dated 26-7-2004 in O.A.No. 734 of 2003 on the file of the Central Administrative Tribunal, Hyderabad.

2. The respondent is applicant before the Tribunal. He approached the Tribunal seeking a direction to the respondents to reimburse the medical expenses incurred by him for the treatment of his wife for Chronic Myeloid Leukemia (C.M.L.) in the United States of America and for setting aside the decision of the 1st respondent dated 28-2-2003 in rejecting the claim of the applicant for reimbursement of the said medical expenses incurred by him.

3. It is the case of the applicant that he was working as Executive Engineer in Engineer-in-Chief's Branch, Military Engineer Services, New Delhi. During August, 1999, his wife Mrs.C.Sabitha Reddy who was aged 34 years at that time was diagnosed for the cure of C.M.L. commonly called as Blood Cancer. The applicant and his wife consulted specialists at AIIMS to learn about the blood cancer and the treatment options and the risks associated with each treatment option. With regard to the treatment, the options available were (1) Chemotherapy with interferon and (2) Bone Marrow Transplantation. Applicant's wife, her parents and her youngest sister underwent tests at AIIMS for knowing whether the applicant wife's parents or her sister genetically match with the applicant's wife for undergoing Bone Marrow Transplantation. Applicant's wife's another younger sister, a resident of USA, also underwent test in USA for knowing whether she is genetically required for Bone Marrow Transplantation of applicant's wife. From the tests results, it was revealed that the applicant's wife's younger sister Mrs. Sunitha Reddy residing in USA alone matched 6 out

of 6 parameters with Mrs. Sabitha Reddy and accordingly Mrs. Sabitha Reddy was found fit for undergoing Bone Marrow Transplantation. Ultimately, it was found that the treatment was available for the wife's of the applicant in M.D.Anderson Cancer Center, University of Texas, USA. The Ministry of Defence also recommended for treatment of Applicant's wife in USA with an attendant and forwarded the application of applicant to the Ministry of Health for approval. The same was not agreed upon. In view of the rejection of the request of the applicant for treatment of his wife abroad, the applicant was left only with treatment options available in India viz., Bone Marrow Transplantation (BMT) and Chemotherapy with Interferon. While the applicant was yet to chose options, he was informed by his well wishers at USA about the alternate treatment with drug STI-571. Immediately the applicant contacted MD ANDERSON Cancer Center, Huston, USA through his relative who is a practicing Medical Specialist in Huston, USA. The applicant was informed that the trails of S.T.I-571 were open to patients meeting at least one of the two criteria. One of the criteria is that the patient should be in accelerated phase (2^{nd} Phase) or blast phase (3^{rd} phase). The other criteria for participating in the trial is that the patient should not have responded to interferon treatment or should have relapsed with peg Interferon treatment. The applicant's wife was in chronic phase (1^{st} phase) and she had not been tried with the interferon-therapy and was not eligible for joining STI-571 trails. In the light of the latest development in the treatment of CML patients, the applicant and his wife reviewed the treatment options with the specialist in AIIMS and it was decided that the applicant's wife shall participate in the clinical trails with peg interferon available in USA only, so that the applicant's wife in case of no response with peg Interferon treatment, can become eligible and participate in STI-571 which is now proved to be the 1^{st} line of therapy treatment of CML patients. Already six months had elapsed since the time of diagnosis. She needed immediate medical attention. So, the applicant submitted his application dated 2-2-2000 (Annexure-3) to the Ministry of Health through Ministry of Defence requesting for permission for treatment of chemotherapy using peg interferon at MD Anderson Cancer Center, Huston, USA. In view of the urgency in the matter, the applicant did not wait for the approval before leaving for USA and he sought for ratification of his action. After arriving in USA on 22-2-2000 the applicant's wife was admitted in the clinical trails from 3-3-2000. As per the protocol of the

trails, the treatment with peg, interferon was started. The Bone Marrow aspiration was done once in three months. Blood tests were also carried out at intervals of 1-4 weeks. In November, 2000, Philadelphia chromosome (Ph) was reduced to 0%. The Remission was short lived and there was relapse and Ph became 30% in February, 2001. So, she was switched over to STI-571 trails in March, 2001. She responded well for the treatment. Her blood counts became normal. The applicant submitted that due to good results, the said drug STI-571, presently called "GLEEVEC" was approved by Food and Drug Administration, U.S.A. (F.D.A., U.S.A.) in May, 2001, a copy of which is Annexure-4, and it is the first line of therapy for treatment of C.M.L. patients. The applicant further submitted that he and his wife returned to India in July, 2001. His wife is now under the treatment of specialists of Department of Medical Oncology, Nizam's Institute of Medical Sciences, Hyderabad, which is a reputed institution, run by the Government of Andhra Pradesh, Hyderabad and also recognized by the Central Government Health Scheme (C.G.H.S.). The applicant submitted that he and his family members are covered by the Central Government Health Scheme (CGHS). On the prescription obtained from the Nizam's Institute of Medical Sciences, the applicant applied to C.G.H.S. for supply of the drug "GLEEVEC" for the treatment of his wife by importing from USA and the drug was imported by CGHS through Consulate General of India and supplied to the applicant's wife on 25-10-2001. The drug "GLEEVEC" is now available in India and she is now on treatment with "GLEEVEC" only. She is responding well for the treatment and her blood counts are normal. An expenditure of U.S.$ 8754.10 towards hospital charges and U.S. $ 4964.00 towards pathologist and physician charges totaling to U.S. $ 13718.10 incurred. Out of the above expenditure, an amount of U.S. $ 7250.00 is already paid and he is yet to pay U.S. $ 6468.00 is already paid and he is yet to pay U.S.$ 6468.00 to M.D.Anderson Cancer Center, Huston, USA. In addition to the above, an amount of U.S.$ 583.00 has to be paid to M.D. Anderson Cancer Center towards charges of Dr. Kantarijan which were written off as a personal favour since applicant's wife did not have medical insurance. An expenditure of U.S. $ 1049.45 towards tests is incurred. An expenditure of Rs.85,000/- towards Air travel of the applicant and his wife to USA and back to India is incurred. Thus, the total expenditure comes to Rs.8,38,647.00 at the rate of Rs.49.00 per U.S. Dollar i.e., ($8754+$4964 +$583.00+ $1079.45) x Rs.49.00 +

Rs.85,000=00 = Rs.8,38,647.00. Out of the said expenditure, already (1) US $ 7250.00 towards part payment to M.D.Anderson Cancer Center, (2) US $ 1079.45 towards blood tests, (3) Rs.85,000/- towards Air travel paid and the total expenditure met by the applicant comes to Rs.4,93,143.00 i.e. ($ 7250 + $1079.45) x Rs.49.00 + Rs.85,000 = Rs. 4,93,143.00. In addition to the above expenditure, the applicant is entitled to D.A. admissible as per rules.

4. The applicant submitted an application dated 19-12-2001 to the Secretary, Ministry of Health and Family Planning, Nirman Bhavan, New Delhi through proper channel, claiming;

i. For the reimbursement of the expenditure of Rs.4,93,143.00 already incurred by him;

ii. To pay the outstanding amount of US $ 6448.10 to M.D.Anderson Cancer Center;

iii. To pay U.S.$ 583.00 to M.D.Anderson Cancer Center towards the amount which has been written off by Dr. Kantarijan; and

iv. To sanction D.A. for stay of the applicant and applicant's wife in USA from 22-2-2000 to 5-7-2001.

5. The applicant's application dated 19-10-2001 was recommended by the Ministry of Defence to the Ministry of Health and Family Welfare, New Delhi but the application was rejected by the standing committee in communication dated 22-5-2002.

6. Aggrieved by the same, the applicant filed O.A. before the Tribunal. Before the Tribunal reply statement was filed by the respondents stating that the wife of the applicant was suffering from chronic Myeloid Leukemia (CML) and the said treatment is also available in the Institute of Rotary Cancer Hospital IRCH, AIIMS, New Delhi. Therefore, there was no necessity for the applicant to go to United States of America for treatment. It is the stand taken by the Standing Committee that the applicant was not entitled for any relief as prayed for and the decision taken by the standing committee is final. The learned Tribunal after

referring to various events that took place right from the commencement of treatment held that the applicant is entitled for the amount towards reimbursement. The Tribunal also restricted the amount to the extent of the amount, had the treatment was taken in India in a recognized Hospital. Thus, the Tribunal finally granted the following relief.

> "*In the result, this O.A. is allowed. The impugned O.M. dated 22-5-2002 of 1st respondent and the impugned proceedings dated 28-2-2003 of the 3rd respondent are hereby set-aside. The respondents are directed to reimburse the applicant an amount of Rs. 6,65,865/- (US $ 14797) towards medical expenses incurred by him for the treatment of his wife, within a period of two months from the date of receipt of a copy of this order, failing which the respondents shall pay interest @ 9% per annum on the said amount till the date of payment. In the circumstances, we direct the parties to bear their own costs".*

7. Assailing the said order of the Tribunal, the Central Government filed this Writ Petition.

8. The learned Standing Counsel for Central Government has argued the matter initially and thereafter took adjournment on two occasions, but, he did not turn up whenever the matter reached the board. Therefore, the matter was considered on the material available on record and we also heard the learned counsel appearing on behalf of the respondent.

9. The only issue that arises for consideration is whether the order passed by the Tribunal is sustainable in law.

10. Admittedly, the claim relates to reimbursement of medical expenses towards the treatment of the wife of the applicant for STI-571. Initially the said treatment was not available in India and STI-571. "GLEEVEC" is now recognized in India as alternative therapy for CML. The applicant has to take his wife for immediate treatment as at the relevant time STI-571 was not available in India and that she was under clinical trials in U.S.A. Therefore, there is no other option for the applicant to take her wife to USA so as to save her life. Sister of the wife was also required to supply Bone Marrow Transplantation, who was also staying in United States of America and the hospital authorities approved the transplantation after conducting necessary trials. The Tribunal has elaborately considered this aspect with reference

to Article 21 of the Constitution of India and the decision of Rasjasthan High Court in ***Gajraj Chand Bhandari Vs. State of Rajasthan*** In ***Amina Kundu Vs. State of Haryana*** In ***Roshani Devi Vs. State of Haryana***.

11. The Tribunal came to the conclusion that even though 100% reimbursement was not permissible, yet the applicant is entitled for the amount, which could be permissible under the Rules, had the treatment been taken in India for Chronic Myeloid Leukemia (CML). Thus, calculating the above amount the Tribunal directed the authorities to reimburse an amount of Rs. 6,65,865/- towards medical expenses incurred by him for the treatment of his wife. Even though it was stated in the affidavit that the Standing Committee has considered this issue and rejected the case of the petitioner for reimbursement, it cannot be considered by this Court as necessary technical knowledge cannot be said to be available in the Court for assessing the reimbursement aspect. This contention is also devoid of merits, inasmuch as what was claimed by the applicant is not the entire amount. In fact, the applicant had spent nearly more than Rs. 8,38,647/-. The Tribunal allowed the claim to a sum of Rs. 6,65,865/- by limiting the expenses, which could have been incurred for the treatment, had the treatment is taken in India in a recognized hospital. Thus, it is to be seen that even if the applicant were to United States for treatment of his wife, yet what he is claiming is reimbursement of expenses as if the treatment is taken in India and the Tribunal restricted the amount to that extent only. The following is the relevant discussion and the conclusions made by the Tribunal;

> *" It is also further explained in para F(i) by the applicant that the applicant's wife did not go to USA for treatment for which the facilities are available in India. His wife did not avail the options available in India for treatment of CML patients and she opted to participate in clinical trials with peg-interferon –STA 571 available in USA only. It is further explained in sub-para (iii) that the applicant had taken his wife for treatment to USA to participate in the clinical trials which were not available in India, because of the definitive treatment through B.M.T. and interferon has serious short comings. The clinical trials with the drug ST 57I-571 gave 100% success and it was widely published through BBC news. According to the news released on the internet "BBC NEWS ONLINE HEALTH", copy of which is produced as Annexure-III to the O.A. every one of 31 patients given the compound of STI-571 achieved 'REMISSION' meaning Doctors could not detect the presence of cancer in their bodies. As per the news item dated 10-5-2001, extracted from the internet on "CCN*

HEALTH", a copy of which is produced as Annexure-X along with the O.A., that 'GLEEVEC' which is also known as STI 571 was one of the fastest drugs approved by U.S.Food and Drug Administration for treatment of CML patients. Thus the clinical trails which the applicant's wife participated with STI 571 was a complete success by the date of participation by the applicant's wife and she remained in remission (no presence of Cancer). Even after return from USA to India, she is on the same drug STI-571 which is now called "GLEEVEC" as prescribed by the department of Oncology of the Institute of NIMS which is a reputed Hospital approved by CGHS and run by Government of A . P . CGHS also imported "GLEEVEC" and supplied to applicant's wife on the prescription given by the Department of Oncology, NIMS, as the said Drug is not available in India. At present it is the first line of therapy for the treatment of CML patients and the same has been approved as "GLEEVEC". The applicant submitted that the clinical trails with STI 571 is now an approved therapy. Thus, from the above facts explained by the applicant, we are satisfied that the applicant's wife has under the above said treatment in US since the said line of treatment which was the best possible treatment was not available in India at that time and even now the said drug is being imported and supplied to her on the prescription given by the Department of Oncoglogy, NIMS. Under these circumstances, we find that the rejection of the claim of the applicant for reimbursement of the medical expenses incurred for the said treatment of his wife in USA by the respondents under the impugned orders passed is unjustified and arbitrary. One more strong reason given by the applicant for his wife to take treatment in USA is that her younger sister who is a resident of USA alone matched genetically for BMI with his wife and from the test results, it was revealed that his wife's sister Mrs. Sunitha Reddy residing in USA alone matched 6 out of 6 parameters with his wife. It is also explained by the applicant in para 2 of this O.A. that his wife's parents, her another younger sister residing in India also underwent tests at AIIMS for knowing whether applicant's wife's parents or her sister genetically match with the applicant's wife for undergoing BMT and it is found that they did not match genetically. Having regard to these facts, it cannot be said that the applicant's wife has no valid reasons for undergoing treatment for blood cancer at USA in spite of rejection of his request by the standing committee of Ministry of Health for grant of permission to go abroad for the said treatment. The standing committee has not taken into consideration the above facts and, in our view, arbitrarily rejected the request made by the applicant for taking his wife to USA for the above treatment. In fact, the respondents have admitted in para 2 of their reply statement that the applicant has informed that his wife's sister

Mrs. Sunitha Reddy residing in USA has been found genetically matching and she has prepared to donate Bone Marrow to his wife. They further admitted that the treating doctor in his certificate stated that the treatment is available in India but due to larger experience, advised to take to MD Anderson Cancer Centre, University of Texas. They also admitted the fact that the applicant submitted at that time that his wife was presently undergoing medical treatment in IRCH AIIMS, New Delhi and treating doctor himself has advised the applicant to take his wife to M.D. Anderson Cancer Centre, University of Texas. Thus, it is found that in compliance with the requirement of Rule 11 of CCS (Medical Attendance) Rules, the applicant has applied for permission to take his wife for medical treatment outside India through the Department/ Ministry and the same was referred to the Standing Committee. However, the standing committee has rejected the said request of the applicant for no justifiable reasons though it is found that adequate facilities for effective treatment of the blood cancer on the lines of the treatment given in USA to the wife of the applicant, were not available in India at that time. Since it has been held in the above referred decisions of the Hon'ble Supreme Court and A.P.High Court that reimbursement of medical expenses incurred by an employee or any of his family members can be allowed to an extent of the amount which he would have incurred had he/she gone to a recognized hospital, we find that the respondents were not justified in rejecting the claim for reimbursement of the medical expenses incurred by the applicant in toto for the treatment of his wife. The applicant has produced Xerox copies of the hospital charges, and pathologist charges, incurred for the treatment of his wife in USA along with the Xerox copies of the medical bills issued and filed a statement showing that total medical expenses incurred by him by way of hospital charges, pathology and physician charges and blood test expenditure etc., for the treatment of his wife in M.D. Anderson Cancer Centre, University of Texas, USA comes to US $ 14797 equivalent to Rs.7,25,080/- at the then prevailing rate of conversion of rs.49/- per US Dollar. In addition to the said expenses, the applicant also claimed that he has incurred Rs.85,000/- spent towards air travel of himself and his wife to USA and back to India and thus total expenditure incurred by him comes to Rs.8,10,080/-. The applicant also submitted a brief note filed by him that he has already paid US $ 8329.45 equivalent to Rs.4,58,145/- as against the total expenditure of US $ 4797 equivalent to 7,125,080/- incurred for the treatment only and he has to pay the remaining US $ 6468 equivalent to Rs.3,90,938/- to M.D.Anderson Cancer Centre and he also submitted a demand notice from the Hospital for payment of the said sum and enclosed a copy of the demand note issued to him. Further, the

applicant's counsel has produced a letter from NIMS, Hyderabad issued on 24-4-2004 stating that according to the estimate, applicant's wife required 22-23 injections of Interferons per month and the treatment is for an indefinite period and that the cost of this treatment is approximately Rs.50,000/- per month. The learned counsel for the applicant submitted that since the applicant's wife has undergone treatment in USA for the period from 3-3-2000 to July 2001 i.e., for a period of nearly 16 months and even after return to India, she is still undergoing treatment at NIMS, Hyderabad which is approved hospital by CGHS and run by Govt. of A.P. by getting imported drug 'GLEEVEC' which has been prescribed by the Department of Oncology of the said Institute, the cost of said treatment in India even by modest estimate will not be less than 10 lakhs. Further, he produced estimated costs of treatment of blood cancer for BMT in Appollo Hospital as per the statement furnished by them dated 2-4-2004 to show that it would cost Rs. 12 lakhs. He also produced another estimate given by Christian Medical College, Vellore for the said treatment to show that the cost of treatment would be Rs. 10 lakhs. The learned counsel for the applicant, therefore, submitted that the applicant is entitled for reimbursement for the total expenses of Rs. 8,10,080/- including Rs. 85,000/- towards air travel which is the actual expenditure incurred, as the said amount claimed is less than the actual cost of the treatment for blood cancer in India in the recognized hospitals. But, we find from the figures given in the O.A. in para 19 that the applicant has incurred by way of medical expenditure US $ 8754 + 4964 + 1079.45 amounting to US $ 14797.45. So far as US $ 583 to be paid to M.D. Anderson Cancer Centre claimed by the applicant, the applicant stated in para 16 of the O.A. that the said charges were written off as personal favour since his wife did not have medical insurance. This fact is also mentioned in the summary of expenditure for the treatment given in Appendix A attached to this O.A. Since the present conversion value of the Dollar is Rs.45/- per dollar, the said amount works out to Rs.6,65,865/-. So far as the travel expenses are concerned, we find that the applicant is not entitled to seek for reimbursement of the same since prior permission to go abroad for the treatment has been refused by the authorities. So, the applicant has to bear the said expenses himself without seeking for reimbursement of the said expenses".

12. Under those circumstances, we do not find any illegality or irrationality in the order of the Tribunal.

13. It is also to be noted that right to life includes right to medical care. If the facilities

are not available in India, it is always open for the petitioner to go abroad and get treatment for his wife. But, however, the authorities cannot deny the reimbursement to the extent, which is permissible under the Rules. Though STI-571 which was not recognized at that point of time, but now it was recognized in India and the same treatment is being allowed and continued to the wife of the petitioner, which is presently called “GLEEVEC”.

14. Under these circumstances, we do not find any illegality in the order passed by the Tribunal.

15. Accordingly, the Writ Petition is dismissed. In view of the dismissal of the Writ Petition, we grant four weeks time to the petitioners-Central Government to reimburse the amount granted by the Tribunal from the date of receipt of a copy of this order, failing which, the respondent is entitled to interest at the rate of 9% per annum as directed by the Tribunal, from the date of order of the Tribunal till the date of actual payment. No order as to costs.

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G.Bikshapathy, J.

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P.S.Narayana,J.

19th April, 2005.

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Government of India, Ministry of Health and Family . . .
Welfare Nirman Bhavan, New Delhi.
2. The Secretary,Government of India, Ministry of Defence, South Block, ... New Delhi.
3. The Engineer-in-Chief, Military Engineer Service, Army Headquarters, Govt . . of India, Kasmir House, New Delhi.

4. 2 CD copies

5. 1 CC to MR.SOMA KONDA REDDY

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

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